

PATENT  
Docket No.: 15275/8611 (Dobbins 2-1)

# IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Reissue Application No.:	08/833,620	)	
		)	
Filed:	April 7, 1997	)	Examiner:
		)	J. Hoffman
U.S. Patent No.:	5,043,002	)	
		)	
Granted:	August 27, 1991	)	Art Unit:
		)	1731
Patentees:	Michael S. Dobbins	)	
	Robert E. McLay	)	
		)	
For:	METHOD OF MAKING FUSED SILICA	)	
	BY DECOMPOSING SILOXANES	)	

## DECLARATION OF JANICE L. BOWERS

I, JANICE L. BOWERS, declare:

1. I am a paralegal employed by Nixon Peabody LLP, Clinton Square, P.O. Box 31051, Rochester, NY 14603.
2. I am presenting this declaration in support of the Petition to Reset Period of Reply Due to Late Receipt of Office Action, Pursuant to MPEP § 710.06.
3. I am fully aware of the procedures of Nixon Peabody regarding the processing of mail received from the U.S. Patent and Trademark Office ("USPTO"). As a matter of course, each USPTO office action we receive is opened upon receipt, immediately date-stamped "Received" on the back of the office action's cover page, and docketed. Upon entering the docketing information into a computerized database, we date-stamp "Entered" on the face of the office action summary.
4. I was responsible for docketing the November 27, 2001, office action ("Office Action") for the above-identified application and am fully aware of the processing history of the Office Action, as detailed below in paragraphs 5 and 6 of this Declaration.
5. On January 16, 2002, Nixon Peabody LLP received the Office Action. This is reflected by the fact that "RECEIVED, JAN 16, 2002, Nixon Peabody LLP" has been stamped on the back page of the Office Action's cover page (Exhibit 1). The Office Action was also docketed on that day as shown by the "ENTERED, Nixon Peabody LLP, JAN 16, 2002" date stamp which I put on the Office Action Summary paper (Exhibit 2).

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6. In addition, the Office Action is discolored (i.e., yellowish) and brittle, as compared to the office actions I customarily docket. Based on my review of the January 16, 2002, letter sent by Nicholas P. Godici, USPTO Commissioner for Patents (attached hereto as **Exhibit 3**), to patent practitioners, I am aware that the Office Action's discoloration and brittleness may be due to the recent anthrax decontamination procedures performed on certain outgoing mail of the USPTO.

7. I hereby declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

Dated: January 30, 2002

  
Janice L. Bowers

JAN-30-2002 04:46

NIXON, PEABODY 10TH

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JAN 16 2002

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Exhibit 1

## Office Action Summary

Application no.

08/833,620

DOBBINS ET AL.

Examiner

John Hoffmann

Art Unit

1731

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 12 September 2001.
- 2a) ☐ This action is FINAL.
- 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 12, 13, 22 and 33-53 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 12-13, 22, 33-44, 46-47 and 49-53 is/are rejected.
- 7) ☒ Claim(s) 45 and 48 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

ENTERED  
Nixon Peabody LLP

JAN 16 2002

FILE 15275/861/98  
AMENDMENT DUE  
FEB. 27, 2002

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

## Exhibit 2

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:



## UNITED STATES PATENT AND TRADEMARK OFFICE

COMMISSIONER FOR PATENTS  
UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
[www.uspto.gov](http://www.uspto.gov)

Dear Patent Practitioner,

The USPTO and the patent community have experienced considerable difficulties since mid-October 2001 due to delays in the delivery of mail by the US Postal Service. I want to assure you that the USPTO is making every effort to deal with this situation in ways that avoid any undue burden upon applicants. Over the last few weeks we have seen an increase in the volume of backlogged mail being delivered and we are working very hard to process this mail as quickly as possible. I ask that you bear with us during this challenge and work with us to the extent possible to minimize the impact of these mail delays.

Unfortunately the decontamination process has damaged some of the mail recently delivered to the USPTO. For example, some patent application papers and drawings including photographs have been stuck together and cannot be separated. Some computer discs have been damaged. Some labels have been blackened so that the text on them cannot be read and some papers have been yellowed and are brittle. The amount of damaged mail is small, about 5%, and the senders are being contacted to supply a duplicate when necessary. Additionally, no application is being held abandoned without us first calling the applicant to ensure that a reply has not been delayed in the mail.

I also understand that there has also been some concern from practitioners that outgoing mail from the Office may have been delayed in some instances. Currently, the USPTO is requesting that applicants follow the procedure set forth in Manual of Patent Examining Procedure (MPEP) 710.06 to establish a delay in receipt of mail if they want to request that the period for reply be reset.

Please consult the USPTO Internet web site (<http://www.uspto.gov>) for updated information on Technology Center facsimile numbers, surface mail alternatives, and other announcements concerning mail delays. Some notices related to the mail delays that have been recently posted on the USPTO web site are listed on the attached table. Section 511 of the MPEP will be revised to state that in the event of a postal emergency an announcement will be placed on the USPTO web site. Note also that the entry of a paper into an application file can be confirmed by checking the PAIR system via our Electronic Business Center on our web site.

Questions related to mail difficulties should be directed to the Office of Patent Legal Administration, by telephone at (703) 308-6906. Alternatively, the questions may be sent via e-mail to [PatentPractice@uspto.gov](mailto:PatentPractice@uspto.gov).

Thank you for your continued cooperation as we deal with this difficult situation.

1/16/02  
Date

Nicholas P. Godici  
NICHOLAS P. GODICI  
Commissioner for Patents

Enclosure: Table of Recent Notices

Exhibit 3